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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 391

ALMA LOVELL,

Appellant,

vs.

CITY OF GRIFFIN.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA.

STATEMENT AS TO JURISDICTION.

/ C. R. Morris,
Counsel for Appellant.

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JURISDICTIONAL STATEMENT.

Statute Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 of the Judicial Code (U. S. C. A., entitled 28, Section 344), which reads as follows:

> "A final judgment or decree in any suit of the highest court of the state in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any state, on the ground of it being repugnant to the Constitution, treaties, or laws

of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ of error shall have same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its decision, award execution or remand the cause to the court from which it was removed by the writ."

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be received as a matter of right or writ of error.

The Statute Drawn Into Question.

In said case the appellant was charged with having violated Section one of an ordinance passed by the City of Griffin, a municipal corporation under the laws of Georgia, which section of said ordinance reads as follows:

"Section one, that the practice of distributing, either by hand or otherwise circulars, handbooks, advertisements, or literature of any kind, whether said articles are being delivered free or whether same are being sold within the city limits of the City of Griffin without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance and punishable as an offense against the City of Griffin."

The Nature of the Cause.

On the 29th day of June, 1936, appellant was tried and convicted in the recorder's court of the City of Griffin for the violation of the ordinance above set out and was adjudged guilty and was sentenced to fifty days in jail in default of the payment of a fine of $50.00.

Appellant's petition for writ of certiorari to said judgment was on the 2nd day of July, 1936, denied and the issuance of the writ refused by the Honorable William E. H. Searcy, Jr., Judge of the Superior Court of the Griffin Circuit.

To this judgment refusing the issuance of the writ of certiorari, appellant brought her bill of exceptions to the Court of Appeals of Georgia.

The facts show that appellant was a minister of the gospel and that at the time she was arrested and accused of violating the ordinance of the City of Griffin, as set out above, she was engaged in going from house to house in the City of Griffin as a minister of the gospel and in the interest of her Christian belief and was engaged in distributing religious literature; for this she was arrested, tried and convicted under the ordinance of the City of Griffin aforesaid.

The Court of Appeals of Georgia on the 11th day of March, 1937, affirmed the judgment of the lower court and upon petition for rehearing the same was denied March 31, 1937.

The plaintiff in error thereupon filed with the Supreme Court of Georgia her petition for writ of certiorari to the judgment of the Court of Appeals of Georgia to review the judgment therein. Upon said petition for writ of certiorari, the Supreme Court of Georgia on May 18, 1937, entered its final order denying the issuance of the writ thereupon making the judgment of the Court of Appeals final upon the issue involved.

It was to correct this judgment that an appeal was prayed to the Supreme Court of the United States, which appeal was allowed by Hon. Nash R. Broyles, Chief Judge of the Court of Appeals of Georgia on 13 day of July, 1937.

The Court of Appeals of the State of Georgia is the highest court of said State in which a decision in this case may be had.

The questions involve the right of free exercise of freedom of conscience, freedom of worship and of the free exercise of religious belief and practice as against the validity of arbitrary ordinances and police regulations.

The ordinance of the City of Griffin brought in question violates the provisions of the Constitution of the United States providing against the making of laws respecting an establishment of religion or the prohibiting of the free exercise thereof and freedom of worship or abridging the freedom of speech and of the press.

Said ordinance, as applied to the work of the defendant, is in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws; that said decision involved the validity of the ordinance of the City of Griffin as against the acts of petitioner done in obedience to the mandate of the Most High God, Jehovah, whose laws and commandments are superior to all human laws, ordinances, statutes, or regulations. In the petition for certiorari brought by appellant to review the judgment of the Recorder's Court of Griffin, appellant, excepted to the judgment of the recorder on the ground that the ordinance of the City of Griffin in question should not apply under the evidence in the case for the reason that if so applied, it is a violation of the Constitution of the State of Georgia which says, "All men have the natural and inalienable right to worship God according to the dictates of their conscience and no human authority should in any case control or interfere with such right of conscience."

In the petition for certiorari, to review the judgment of the recorder, it expressly states that said ordinance is void, because said ordinance is contrary to and in violation of the First Amendment to the Constitution of the United States which reads:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

And to so apply the above ordinance to the work of this defendant involves a question of the utmost gravity and importance in that said ordinance prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion and Christian belief in violation of the terms of said amendment.

In petition for certiorari to review the judgment of the recorder it expressly states that the ordinance is void and in conflict with the above quoted First Amendment to the Constitution in that said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press contrary to the provisions of said First Amendment.

While this provision of said First Amendment to the Constitution is not a restraint upon the powers of States, the States are precluded from abridging the freedom of speech or of the press or the free exercise of religion by force of the due process clause of the Fourteenth Amendment which was invoked in the trial court as shown by the petition for certiorari to review the judgment of the recorder. Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the

City of Griffin without the permission of the City Manager thus bringing said ordinance in conflict with the due process of law clause of the Fourteenth Amendment.

Upon the bill of exceptions to the Court of Appeals of Georgia, the court in its original decision held that the ordinance in question was not in violation of the Fourteenth Amendment to the Constitution of the United States because it abridges the freedom of the press or prohibits the distribution of literature about petitioner's religion.

On petition for rehearing the Court of Appeals of Georgia denied said petition on March 31, 1937. Thereupon a writ of certiorari was presented to the Supreme Court of Georgia for a review of the final decision of the Court of Appeals of Georgia rendered on March 11, 1937, and on May 18, 1937, the Supreme Court of Georgia entered judgment refusing the writ of certiorari, and to the final judgment of the Court of Appeals of Georgia this appeal is made.

This appeal contests the validity of the ordinance of the City of Griffin and it is assailed as violating the Federal Constitution in three particulars—(1) that it abridges the freedom of the press in contravention of the due process clause contained in paragraph 1 of the Fourteenth Amendment; (2) that it denies appellant the free exercise of religion and freedom of worship in contravention of the same amendment; (3) that it is arbitrary and vests in the city manager arbitrary power with no fixed standards of decision in contravention of the same amendment to the Constitution of the United States.

1. The first point presents a question of the utmost gravity and importance; for it goes to the heart of the natural right of the members of organized society, united for their common good, to impart and acquire information about their common interests. The judgment of the Court of

Appeals of Georgia held that the ordinance in question does not abridge the freedom of the press or prohibit the distribution of literature about petitioner's religion in violation of the Fourteenth Amendment to the Constitution of the United States. This ruling of the court involves the Federal question under the due process clause of the Fourteenth Amendment.

Gitlow v. *New York,* 268 U. S. 652, 666, 69 L. Ed. 1138, 1145;

Near v. *Minnesota,* 283 U. S. 697, 707, 75 L. Ed. 1357, 1362.

The word "liberty" contained in that amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well.

Allgeyer v. *Louisiana,* 165 U. S. 578, 589, 41 L. Ed. 832, 835;

Grosjean v. *American Press Co.,* 297 U. S. 242.

The question of the repugnance of the ordinance to the due process clause of the Fourteenth Amendment by denying to appellant the free exercise of her religion was raised by counsel in paragraph 2 of his demurrer which is set out in petition for certiorari.

In paragraph 2 it was insisted that the ordinance was contrary to and in violation of the First Amendment to the Constitution of the United States.

In the same paragraph of the demurrer it was also insisted that the ordinance was in violation of the Fourteenth Amendment to the Constitution of the United States, quoting paragraph 2, which includes the due process clause, and stating as the reason that: "Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permis-

sion of the city manager and thus abridges the freedom of the press, contrary to the provisions of the said quoted amendments." This question was argued before the Court of Appeals and by motion for rehearing and in the petition for certiorari to the Supreme Court. For that it restricts the citizen's liberty of bodily movement, his freedom of intercourse with his fellowmen, and his right to contract to engage in common and harmless occupations, and to enjoy the rights and privileges long recognized by the law as essential to the orderly pursuit of happiness to free men. Said ordinance is not a valid exercise of the police power but is an arbitrary and unreasonable prohibition of harmless acts to which the police power plainly does not extend.

2. The judgment of the Court of Appeals held that the ordinance in question was not in violation of the rights of appellant in the free exercise of religious liberty (see *Coleman* v. *Griffin,* 55 Ga. App. 123, 189 S. E. 427), and such ruling involves the Federal question under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Grosjean v. *American Press,* 297 U. S. 242;
Howell v. *Alabama,* 287 U. S. 45, 65, 68;
Watson v. *Jones,* 80 U. S. 679;
Meyer v. *Nebraska,* 262 U. S. 390;
Holy Trinity Church v. *United States,* 145 U. S. 457;
Coppage v. *Kansas,* 236 U. S. 1;
Near v. *Minnesota,* 283 U. S. 713.

3. The judgment of the Court of Appeals decided that the "ordinance was not attacked on the ground that it arbitrarily grants to the city manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review." It is respectfully submitted that in paragraph 2 of the demurrer

of appellant this question was expressly raised by calling attention to the constitutional provisions of the due process clause and that contrary thereto said "ordinance absolutely prohibits the distribution of literature of any kind within the limits of the City of Griffin without the permission of the City Manager." Such ruling in favor of the validity of the ordinance raises the Federal question under the due process clause of the Fourteenth Amendment.

Yick Wo v. *Hopkins,* 118 U. S. 356;
State of Washington v. *Roberge,* 278 U. S. 116;
Bent v. *The State of W. Virginia,* 129 U. S. 114;
Meyer v. *Nebraska,* 262 U. S. 390.

There are two minor points on which the validity of the ordinance is assailed as violating the Federal Constitution as follows: (a) that it provides for summary punishment as a nuisance harmless acts in contravention of the due process clause contained in paragraph 1 of the Fourteenth Amendment; (b) That it provides no penalty, therefore making judgment or penalty on appellant void in contravention of the same amendment.

(a) The Court of Appeals decided that in addition to the general or fixed laws, the City of Griffin had a right to enact said ordinance and declare that "the practice of distributing either by hand or otherwise circulars, handbooks, advertising or literature of any kind, whether said articles are being delivered free or otherwise same are being sold, and such rule involves the Federal question under the due process clause of the Fourteenth Amendment."

Yates v. *Milwaukee,* 77 U. S. 497.

(b) The Court of Appeals of Georgia failed to pass upon and decide the question raised in paragraph 1 by appellant that the ordinance was void because said ordinance failed to provide any penalty for the violation thereof.

This was urged in brief and argument of counsel before the Court of Appeals. Such ruling involves the Federal question under the due process clause of the Fourteenth Amendment.

In so ruling the Court of Appeals denied to appellant her right to freely distribute printed matter in the free exercise of religion and worship and to thus arbitrarily declare harmless and innocent acts to be a nuisance and to summarily punish appellant when there was no penalty provided in said ordinance was a denial of appellant's rights under the Constitution.

O. R. Moyle,
Grover C. Powell,
Counsel for Appellant.

APPENDIX A.

COURT OF APPEALS OF GEORGIA.

25850.

LOVELL

v.

CITY OF GRIFFIN.

By the Court:

MACINTYRE, *J.*:

1. There was no conflict between the law as embodied in the Code, §§ 72-401, 72-9901, and the municipal ordinance as follows: "Be it ordained by the Board of Commissioners of the City of Griffin: Section 1: That the practice of distributing either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin. Section 2: The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

2. The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States (Code, § 1-815). See Coleman *v.* Griffin, 55 Ga. App. 123 (189 S. E. 427). The ordinance is not attacked on the ground that it arbitrarily grants to the city manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review.

3. The charge that an ordinance is void because it violates a designated, numbered article, section, and paragraph of the constitution of the State of Georgia or of the United States, and then quotes the part of the constitution attacked, without stating wherein it violates the provision of the constitution, is too indefinite to invoke a ruling upon the constitutionality of the ordinance. Curtis *v.* Helen, 171 Ga. 256 (155 S. E. 202).

4. "In the trial before a municipal court, the recorder, or the presiding judge, may take judicial notice of the ordinances of the city defining offenses against the same." Bateman v. Atlanta, 51 Ga. App. 10 (179 S. E. 403).

5. The judge of the superior court did not err in refusing to sanction the petition for certiorari.

Judgment affirmed. Broyles, C. J., and Guerry, J., concur.

APPENDIX B.

COURT OF APPEALS OF GEORGIA.

No. 25695.

COLEMAN

v.

CITY OF GRIFFIN.

By the COURT:

Restraints upon the free exercise of religion according to the dictates of conscience are unlawful under our State and national constitutions. "No external authority is to place itself between the finite being and the infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object. [But 'religious liberty does not include the right to introduce and carry out every scheme or pur-

pose which persons see fit to claim as a part of their religious system. No one can stretch his liberty so as to interfere with that of his neighbor, or violate police regulations or the penal laws of the land, enacted for the good order and general welfare of all the people.']" 2 Cooley's Constitutional Limitations (8th ed.), 968.

2. An ordinance passed by the City of Griffin, declaring "that the practice of distributing, either by hand or otherwise, circulars, hand-books, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold within the city limits of the City of Griffin, without first obtaining written permission from the city manager of the City of Griffin, shall be deemed a nuisance, and punishable as an offense against the City of Griffin," does not deprive the defendant of his constitutional right of the free exercise and enjoyment of religious profession and worship, even though it prohibits him from introducing and carrying out a scheme or purpose which he sees fit to claim as a part of his religious system. "A party's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land."

Decided September 17, 1936.
Adhered to on rehearing December 18, 1936.

MacIntyre, *J.*:

Coleman was convicted, in the recorder's court of the City of Griffin, of a violation of section 1 of an ordinance of said city which reads as follows: "That the practice of distributing either by hand or otherwise circulars, hand-books, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold within the city limits of the City of Griffin, without first obtaining written permission from the city manager of the City of Griffin, * * * shall be deemed a nuisance, and punishable as an offense against the City of Griffin." The judge of the superior court refused to sanction a petition for certiorari, and the defendant excepted.

At the trial in the recorder's court, Paul Slaton, a citizen of Griffin, testified that he knew Mr. Coleman and saw him in Griffin on March 15, and that Mr. Coleman gave him a yellow card and asked him if he did not want to buy a book. Mr. Slaton told him that he did not want to read the card and he did not want to buy a book, and then Mr. Coleman gave Mr. Slaton a radio slip. The yellow card was introduced in evidence. It read as follows: "The newspapers have had much to say about Loyalty. The Associated Press, however, declines to publish the truth regarding this issue. Every fairminded person should want to know the true facts. I would like to leave with you some booklets which discuss problems affecting you. New political methods are everywhere. Dictators grab control of the governments and make special laws. How can you be loyal to all and still be true to God? The answers in these booklets will help you, because there is no dodging or sidestepping the issue, but straightforward Bible answers, which is what you need and want. These three booklets please read carefully, and by contributing, say, ten cents, you will make it possible to print more of these which can be placed in the hands of other persons desiring truth." After the admission of this evidence, the defendant made a statement admitting that he did not obtain from the City of Griffin a permit to distribute circulars, handbooks, advertising, or literature of any kind, and that at the time he was arrested he was distributing circulars, handbooks, advertising matter, or literature within the City of Griffin. He further stated that he did not ask for a permit from the City of Griffin, because he was sent by Jehovah to do His work, and that His law is supreme and above every human law, and to apply for a permit to do His work would be an act of disobedience to His commandment and it would be an insult to Almighty God. A copy in full of said statement is as follows: "I admit that I did not obtain from the city manager of the City of Griffin a permit to distribute circulars, handbooks, and advertising, or literature of any kind; and I further admit that at the time I was arrested by the police officers of the City of Griffin I was distributing circulars, handbooks, advertising matter or literature within

the City of Griffin. I am one of Jehovah's witnesses, who are entirely devoted to God, and who obey His law by publishing his truth without money consideration. I am a true and sincere follower of Christ Jesus, who is the Son of Jehovah God. I have consecrated myself to do the will of God, and to follow in the footsteps of Jesus. In obedience to the command of Jehovah I was preaching the gospel of his kingdom from house to house when I was arrested. God's command as set forth in His holy word at Isaiah 61:1,2; Matthew 10:7,12; John 18:37; Acts 20:20; 1 Peter 2:21. If I failed or neglected to obey these commandments, I would be destroyed. This is shown in Acts 3:22, 23, which reads as follows: 'For Moses truly said unto the fathers: A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass that every soul which will not hear that prophet shall be destroyed from among the people.' I called on the people at their homes and told them about the Kingdom of Jehovah. I displayed to them books and booklets which contain the message of the kingdom, and gave them opportunity to secure this printed message if they so desired. I further offered to the people invitations to hear the kingdom message over the radio. As I had opportunity I told the people how they could have a part in the work, either through going forth to the people with the message or by making a small contribution to assist in carrying the message forward. The message is too important and the time is too short to cover the whole work in a few words; hence the message of facts concerning Jehovah's Kingdom and giving the scriptural authority. This enables the people to sit quietly in their own homes and to inform themselves of and concerning the real meaning of present-day world distress, and of the kingdom that will bring relief. Under the authority of Jehovah I am a duly ordained and authorized minister of the gospel, and it is incumbent upon me, in obedience to God's law, to preach the gospel. I worship Jehovah God by obeying His Commandments. God's work, the Bible, commands all who worship him in spirit and in truth to go from place to place

and tell others about Him and His kingdom. At the time I was arrested I was going from house to house in obedience to His word, and according to the dictates of my own conscience. I did not ask for a permit from the police department, because I am sent by Jehovah to do his work. His law is supreme and above every human law. To apply for a permit to do His work would be an act of disobedience to his commandment. It would be an insult to Almighty God, and would in time result in my own destruction. I have no disposition to violate any law, but must obey God rather than man, and in this way I worship Him as commanded. Luke 20:25; Acts 3:23; Acts 4:19, Acts 4:34-38. I get the books and booklets to exhibit to the people from the Watch Tower Society, which is a corporation organized for the very purpose of preaching the Bible message in printed form. It publishes the messages of God's kingdom in book form to be carried to the people and exhibited to them for the purpose of informing them of the truth. The money received is far less than the cost of carrying on the work. The deficit is made up by voluntary contributions of men and women who are anxious to preach the gospel of the Kingdom in obedience to God's commands."

The defendant contends that "The ordinance involved does not apply to the work of this defendant, for the following reasons: 1. That the act complained of, and for which defendant was arrested, was done in obedience to the mandate of the Most High God Jehovah, the Creator of the universe, whose laws and commands are superior to all human laws, ordinances, statutes or regulations. 2. That to apply said ordinance to the work of this defendant brings it into conflict with the provisions of the constitution of this State, guaranteeing freedom of worship in accordance with the dictates of conscience; and further brings said ordinance into conflict with the provisions of the fourteenth amendment to the constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law. 3. That the Supreme Court of the United States has decreed that 'This is a Christian nation,' and therefore the nation and all States, counties, and municipalities are estopped and

precluded from interfering with or regulating the presentation of a Christian message to the people."

The City of Griffin had the right and power to enact the ordinance under consideration. It is constitutional and valid as prescribing a rule of action for all of those who engage in the practice of distributing either handbills or other circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free or whether the same are being sold within the city limits of Griffin. We do not think the defendant's argument is sound, that, because he conscientiously believed that he is permitted by the law of God to distribute in the City of Griffin, by hand or otherwise, circulars, handbooks, advertising, or literature of any kind without obtaining the written permission from the city manager of Griffin, he may violate with impunity an ordinance declaring it illegal to do so. A man's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the laws of the city. The ordinance which imposes the penalty operates upon all alike, and interferes with no man's religious belief. It is directed against the acts, and not the beliefs of the citizen, and a violation thereof cannot be justified by the contention that it interferes with the religious belief of the citizen. In Reynolds *v.* U. S., 98 U. S. 145 (25 L. ed. 244), where the question involved was a polygamous marriage between two persons commonly known as Mormons, who had been previously married, this doctrine was laid down: "A party's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land." See also Owen *v.* State, 6 Okla. Cr. 110, 116 (116 Pac. 345, 36 L. R. A. (N. S.) 633, Ann. Cas. 1913 B, 1218). As bearing on the question under consideration, we quote the following from the Reynolds case, *supra*: "In our opinion, the statute, immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the territories, and in places over which the United States have exclusive control. This being so, the only question which remains is whether those who make polygamy a part of their

religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions; and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of a religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So, here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. The breaking of the law is the crime. Every act necessary to constitute the crime in this case was knowingly done, and therefore the crime was knowingly committed. Ignorance of a fact may sometimes be taken as evidence of a want of criminal intent, but not ignorance of the law. That defense of the accused in this case, which is his belief that the law ought not to have been enacted, is not meritorious. It matters not that his belief was a part of his professed religion; it was still belief, and belief only. There should be no restraint on the free exercise of religion according to the dictates of the conscience. No external authority should be allowed to place itself between the finite being and the Infinite when the former is seeking to render homage that is due, and in a mode which commends itself to his conscience

and judgment as being suitable for him to render, and acceptable to its object. 2 Cooley's Constitutional Limitations, 968. But "Religious liberty does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as a part of their religious system. No one can stretch his liberty so as to interfere with that of his neighbor, or violate police regulations or the penal laws of the land, enacted for the good order and general welfare of all the people. Liberty founded by the fathers was not license unrestrained by law." McMaster *v.* State, 2 Okla. Cr. 318 (207) Pac. 566, 29 A. L. R. 292). Prohibiting one from distributing literature, as stated in the ordinance, without the permission of the city manager of Griffin, does not deprive him of his constitutional right of the free exercise and enjoyment of religious profession and worship, even though it prohibits him from introducing and carrying out a scheme or purpose which he sees fit to claim as a part of his religious system.

Judgment affirmed. Broyles, C. J., and Guerry, J., concur.

On Rehearing.

MacIntyre, *J.:*

Counsel who represent the plaintiff in error on the rehearing in their brief very frankly state that "*the truth is that counsel who drew the petition for certiorari and first presented the case in this court had in mind the religious objections which he strenuously urged.* The court has held that these objections to the constitutionality of the ordinance were not good. But, if, unwittingly perhaps, counsel did present a good secular objection to the constitutionality of the ordinance, then the least the court can do is to enforce that objection to keep a man from going to jail for a crime he did not commit." (Italics ours.) The italicized part of counsel's statement is the same construction that this court put upon the petition for certiorari; that is that the objections urged by the plaintiff in error were the religious objections and did not go to the question that the discretion given by the ordinance to the city manager of Griffin was so arbitrary and uncontrolled that it was a violation of the 14th amendment to the constitu-

tion of the United States. The relevant parts of the petition for certiorari, which constitute the only record before this court of the proceedings in the trial court are as follows: "4. The ordinance should not be applied to the work of this defendant, because to so apply it brings it in conflict with the provisions of the 14th amendment of the United States constitution, which provides that no State shall deprive any person of life, liberty, or property without due process of law. 5. Petitioner shows that all questions set forth herein and assigned as error were insisted upon at the trial of said cause before the recorder." This charge as to the unconstitutionality of the ordinance, failing to state wherein the ordinance violates the 14th amendment to the constitution of the United States, is too indefinite to invoke any ruling upon the constitutionality of the ordinance. Jordan *v.* State, 172 Ga. 857 (159 S. E. 235); Curtis *v.* Helen, 171 Ga. 256 (2-c, d) (155 S. E. 202). See also Palmer *v.* Phinizy, 151 Ga. 589, 591 (107 S. E. 852). Irrespective of what may be the rulings in other States, we feel that we are bound by the rulings of the Supreme Court of this State as to when we can consider the unconstitutionality of an ordinance.

Judgment adhered to. Broyles, C. J., and Guerry, J., concur.

COURT OF APPEALS OF THE STATE OF GEORGIA.

CLERK'S OFFICE, ATLANTA.

Aug. 19, 1937.

I hereby certify that the foregoing pages attached hereto contain a true and complete copy of the opinion of the Court of Appeals of Georgia in the case therein stated, as appears from the original on file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[SEAL.] MORGAN THOMAS,
Deputy Clerk.

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IN THE

Supreme Court of the United States

October Term, 1937

No. 391

ALMA LOVELL,

Appellant,

v.

CITY OF GRIFFIN,

Appellee.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF GEORGIA.

APPELLANT'S BRIEF

O. R. MOYLE,
Counsel for Appellant.

VAN C. POWELL,
of Counsel.

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